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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1962

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Plaintiffs-Appellants.

AGAINST

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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Opinion Below

The opinion of the three-judge District Court (Appendix A, *infra*) is reported at 214 F. Supp. 897.

Jurisdiction

A three-judge District Court was convened pursuant to 28 U. S. C. Sections 2281 and 2284. On January 18, 1963 the Court entered a judgment dismissing the complaint. A Notice of Appeal was filed in the District Court on March 20, 1963. Jurisdiction of this Court to review the judgment below is conferred by 28 U. S. C. Section 1253.

Questions Presented

1. Whether appellants sustained their burden of proving that the portion of Chapter 980 of the 1961 Laws of the State of New York which delineates the boundaries of the Congressional districts in Queens segregates eligible voters by race in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment and in violation of the Fifteenth Amendment.

2. Whether a statute which, without any contradiction at time of trial, having established a color line between White and Negro citizens in an erratic line, five miles long and which segregation is so clearly defined that Colored are on the southern side of the boundary and White are on the northern side of the boundary, and which division is with such sharpness as though "cleaved by a knife", going in and out of election districts is an unconstitutional act. Whether this five mile erratic "color line" which forms 80% of the northern boundary of the Seventh Congressional District and 80% of the southern boundary of the Sixth Congressional District does not violate the constitutional provisions of the United States.

3. Whether the removal en masse from the Sixth Congressional District in Queens of approximately 17,000

Negroes and adding them to an adjacent contiguous mass of an additional 80,000 Negroes in the Seventh Congressional District, particularly when they are being removed from the smallest Congressional District in Queens to the largest, is not an unconstitutional act. Whether in fact, a State Legislature may constitutionally create a "Negro Ghetto" of 97,000 Negroes all in one mass and confined to one congressional district and which represents 80% of all of the Negroes in Queens, which has in fact, a total of four congressional districts, is not an unconstitutional act.

4. Whether the substitution of 17,000 Negroes in the Sixth Congressional District by replacing this area with another, completely inhabited by White citizens of almost equal number, and thus in effect deliberately creating a White Congressional District of 417,000 people, with a percentage of less than 1% Negro population (namely, the Sixth Congressional District) and creating an adjacent congressional district of 459,000 people, with a Negro population of more than 21% of the total (namely, the Seventh Congressional District) is not discriminatory, segregation in its worst form and in violation of the Constitution of the United States.

5. Whether the removal of a Negro from the Sixth Congressional District, simply because of his color and race, to the Seventh Congressional District is not an unconstitutional act.

6. Whether a party in power in the State Legislature can so gerrymander congressional districts that they can join a remote area such as Staten Island with a piece of territory fronting on Jamaica Bay in Brooklyn, crossing New York Harbor and several intervening congressional

districts, in order to do so. Whether in fact, there is any limitation to creating a congressional district by taking various segments of territory from different parts of the state, separated by other congressional areas and calling such remote areas a single congressional district when it pleases the political desires of the party in power, and whether or not this in fact violates the due process of law of the Constitution of the United States.

7. Whether the members of the party in power in the State Legislature, in violation of their oath of office to impartially use the powers thereof, can deliberately design, create and vote into law a bill which gives political advantages to the party members of one political party and is designed to serve the detriment of every other political party member; or is a member of the legislature under the due process of law provision of the United States Constitution, bound by his duty and oath to fairly represent all constituents and citizens of his state regardless of political party, race or party affiliation. Does such procedure also "abridge the privileges" and immunities of the citizens of the United States and does it deprive such persons of due process of law.

Constitutional Provisions and Statutes Involved

The Constitutional provisions and statutes involved are the Fourteenth and Fifteenth amendments to the United States Constitution, 2 U. S. C. Section 2(a), 42 U. S. C. Sections 1983 and 1988, 28 U. S. C. Sections 1343, 2201, 2202 and 2281, and Chapter 980 of the 1961 Laws of New York. The pertinent provisions of 2 U. S. C. Section 2(a) and Chapter 980 are set forth in Appendix B, *infra*.

Statement

On November 9, 1961, the Joint Legislative Committee on Reapportionment recommended to an extraordinary session of the New York State Legislature a statute redrawing the boundaries of the Congressional districts of the state in accordance with the 1960 Federal census, as required by 2 U. S. C. Section 2(a), *New York State Legislature Document* No. 45 (1961), set forth in Appendix B, *infra*. No hearings were held, no opportunity was given for many of the legislators to know the nature of the bill presented, no debates were recorded before the vote was taken. Many legislators protested the lack of opportunity to understand the bill before the vote, having received the metes and boundaries of 41 Congressional districts for the first time *one hour before the vote was taken;* many of these districts drawn in such unique shapes and sizes as to have between 20 and 40 sides. The statute was nevertheless passed with only members of the party in power voting in the affirmative and was signed by the Governor on the next day. N. Y. Sess. Laws, Extraordinary Sess. 1961, c. 980 Sections 110-12.

On April 24, 1962, appellants filed a civil complaint pursuant to the Civil Rights Act, 42 U. S. C. Sections 1983 and 1988, 28 U. S. C. Section 1343, in which they challenged, in their First Cause of Action, that portion of the statute which delineates the boundary between the Sixth and Seventh Congressional Districts in particular, on the ground that there had been deliberately designed and in fact, created a five-mile "color line"; and a Second Cause of Action which challenged constitutionally all of the 41 other districts as constituted. Appellants are residents and registered voters in what was once part of the present Sixth Congressional District, but now find that they are part of the Seventh Congressional District living

in a "Colored Ghetto" of 97,000 colored people whose northern boundary forms 80% of the northern boundary of the Seventh Congressional District and 80% of the southern boundary of the Sixth Congressional District. The appellees named in the complaint are various state and city officials charged with the administration of the statute. The First Cause of Action of the complaint alleges that the challenged portion of the statute clearly segregates eligible voters in Queens on the basis of race, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and in violation of the Fifteenth Amendment. It is to be noted that the only Republican district in Queens County is the Sixth Congressional District, which is not only the smallest, but the one from which the 17,000 colored citizens, the plaintiffs being a portion thereof, were thrown into the largest Congressional district, namely the Seventh Congressional District, which now holds, in a single sold mass group, 80% of all of the Negroes in Queens, namely 97,000 colored people. The Second Cause of Action is based on the legal theory that a member of the State Legislature, once elected to office must serve all of the citizens of the state impartially and equal, and when he deliberately conspires, designs and votes into law, a bill which favors the citizens of one political party against the well-being of members of the other political parties, is in violation of the Constitution. That a Public Office is a Public Trust. That such a bill which permits 47% of the people of the State of New York, in this case Republicans, to hold 60% of the state's Congressional seats in Congress is so discriminatory, so prejudicial and so violative of the due process of law that it violates the Constitution of the United States. The complaint, on each of its two causes of action, pursuant to 28 U. S. C. Section 2201, declares the statute unconstitutional and ask that defendants be restrained in the en-

forcement thereof, and in the event such declaration does not lead to corrective legislation, additional equitable relief be granted.

It is to be noted by the Learned Court that motions were made at the commencement of trial to dismiss each of the above set forth causes of action and that such motions were denied.

On August 13, 1962, on motion of appellants, Dooling, D. J. determined that a three-judge Court should be convened pursuant to 28 U. S. C. Sections 2281 and 2284.

It is to be further noted that at the time of trial plaintiffs were permitted to enter proof on both causes of action, the validity of each was sustained, and the basic issues before this Court is whether or not in fact, the appellants did prove the allegations of their complaint.

During the trial appellants presented *uncontradicted expert testimony,* charts and statistics, among others, showing the boundaries of the four districts in Queens and the white and colored populations in connection with the boundaries. In addition there was presented expert testimony, charts and exhibits showing various Congressional districts in the State of New York as well as testimony and statistics showing the overall consequences of Chapter 980 of the 1961 Laws of the State of New York.

During the trial a blown-up map of the new Sixth Congressional District superimposed upon the old Fourth Congressional District, Queens, and approximately six feet high, was presented. This was an identical replica of Plaintiffs' Exhibit 3 in its complaint and which was marked, Plaintiffs' Exhibit 1 at trial, a copy of which is annexed hereto and made a part hereof as the exhibit was marked during the course of the trial.

Appellants' first witness, William Nance, is a colored citizen of the United States, a duly registered voter who resides in the area marked "A" on Plaintiffs' Exhibit "C" herewith and which is Plaintiffs' Exhibit 3 of the complaint. Mr. Nance happens to be a registered member of the Democratic Party.

He testified that when he first learned of the proposed lines of the new Sixth Congressional District as set forth in Chapter 980 of the Laws of 1961, he and hundreds of others signed petitions objecting to the creation of a "black belt" in Queens and the transferring of 17,000 colored people from the old Fourth district (now the new Sixth district) into the new Seventh Congressional District, where already 80,000 colored people dwell in a compact unit. He also stated that no opportunity was given for any public hearing on the bill. He stated his violent objection to being removed from the old district to the new, simply because he was one of 17,000 colored people. That had he been in the "white" area of the old district he would have remained therein. He admitted that he had a right to vote in the new Seventh Congressional District, but that this right was a separate right, but not an equal one to those of the white in the Sixth Congressional District. It is to be noted that the Sixth Congressional District has a Republican Congressman and that all of the other districts in Queens are represented by Democratic Congressmen. He stated that he objected to the separation of races and the segregation which was clear and obvious because of the lines as drawn. He confirmed that the 17,000 Negroes of which he was one, were being merged into a total compact mass of 97,000 colored people all living immediately to the south of Archer Avenue, Jamaica Avenue, Hollis Avenue, Colfax Street and west of part of Springfield Boulevard, which kept them directly out of the Sixth Congres-

sional District. He stated that his constitutional rights had been violated and asked that the district be changed in its physical structure.

The next witness called was Walter Sommer, a police officer of the City of New York, who had been such an officer for 14 years and who had been assigned for many years to the area generally where the appellants contend the five-mile color line exists. He resides two blocks north of this color line and testified clearly and convincingly that his area was white and when you went two blocks south and crossed Hollis Avenue you were in colored territory. He fully confirmed that from Point 1 of Plaintiffs' Exhibit "C" herein, travelling north along Springfield Boulevard, then west along Colfax Street and Hollis Avenue into Jamaica Avenue you had a definite and clear division between white and colored, with white on the north side of the street and colored on the south side of the street. He described this area almost block by block and proved that the color line was a factual reality. Officer Sommer is a white citizen residing in the old Fourth Congressional District now the new Sixth Congressional District and just north of area "A". He clearly pointed out among others, that the only portion of Springfield Boulevard, which divides white from colored, was the area used to separate the new Sixth from the new Seventh Congressional District. If you travelled north thereafter you entered an area of white completely. Both sides of which were in the Sixth Congressional District.

The next witness is one of the appellants, John E. Perry, who testified that he is an American citizen and a member of the Negro race, is registered as a member of the Democratic Party and owned his own home in area "A" of Plaintiffs' Exhibit "C". He stated that he

strongly objected being moved out of the new Sixth Congressional District, which was the old Fourth, with 17,000 other colored people en masse into the Seventh Congressional District. He confirmed that the southern boundary of the Sixth Congressional District between 1 and 2 on Plaintiffs' Exhibit "C" was clearly a color line. He fully confirmed the contents of appellants' complaint in its entirety and stated that his constitutional rights had been violated and that he had been evicted out of one Congressional district, solely because he was colored, into another.

Appellants' next witness was Lt. Esiah Friedman, who was one of the senior officers of the Police Department of the precinct adjoining the one to which Officer Sommer belonged. He testified that he had lived in the area, approximate to the five-mile color line, almost all of his life and that most of it was under his personal police supervision. He testified that Archer Avenue was divided by a "Chinese wall" which ran the length of Archer Avenue and on the south of it was solid colored population, north of it was solid white population. That connecting the two and running from the cement wall were tunnels, several hundred feet long. That the colored actually lived right up against the south side of the wall and the whites, right up against the north side of the wall. He also testified that area "B", which under laws of Chapter 980, was added to the Sixth Congressional District, was completely white, while area "A", taken from the Sixth Congressional District, was practically completely colored. He further testified that he personally clocked on his automobile speedometer, the distance between Point 1 from Springfield Boulevard and Linden Boulevard along Hollis Avenue, Jamaica Avenue and Archer Avenue and that it was five miles in length. That along this entire stretch

on one side of the street you find white people and on the other side of the street you find only colored. That this line was clearly and actually a color line dividing the white from the colored. This officer went over the entire five mile color line step by step, street by street and turn by turn proving the statement. He also identified photographs showing various sections of this color line which will be presented to this Learned Court at time of argument. The Chinese wall along Archer Avenue was two miles long. The rest of the 5 mile color line went in and out of streets.

The next witness called by appellants was State Senator Joseph Zaretzki, the minority leader of the State Senate of the State of New York. He testified that he was such minority leader when Chapter 980 of the Laws of 1961 were passed into law. He stated that all members of the State Legislative body were duty bound, and took an oath, to serve without partiality to any group of citizens. That instead of having the Congressional reapportionment taken care of during the regular session, an extraordinary session was called by the Governor. Not one of the minority members of the New York State Senate or Assembly were given the opportunity to examine any of the maps showing the newly designed Congressional districts, not one actually saw the proposed bill until one hour before the vote was taken. They did not even give the members of the State Senate and Assembly an opportunity to read the bill which involved descriptions of 41 other districts, many with 30 and 40 sides to it. He further testified that there was violent objection on the Senate and Assembly floors to the ramming through of this bill and asking for a vote when the legislators did not have time to read it. That the only senators voting for the bill were members of the Republican Party who,

while a majority in the Senate, were in fact a minority party in the State.

Of equal importance is the fact that this witness had before him the entire transcript of the debate which he authenticated as being true and complete as filed, having made photostats of the same from the records of the Clerk's office in Albany. That certain parts of the debate had been deliberately deleted and that an examination of the record shows references to speeches made in opposition to the bill, but the speeches themselves were deleted from the record. That he had in fact the entire record as it existed, before him and which same was introduced into evidence and will be presented to the Learned Court at time of argument. That there were members of the minority party who demanded to see the maps of the new Congressional districts which were available in the map room, but were refused access thereto. That among those members of the Senate was a member of the Legislative Committee whose duty it was to set up the Congressional districts and he too, was refused access to the maps as drawn by a hand-picked group of Republican Senators, and which maps ultimately became Chapter 980 of the Laws of 1961. He stated that he himself, although leader of the Democratic Senators, was unable to, prior to voting, see the new congressional maps and that not a single Democratic vote was cast for Chapter 980 of the Laws of 1961 because none had the opportunity to read and understand it. That no meetings were held on this bill by the committees charged with such meetings, except one meeting called an hour before the bill was introduced. That it was never presented to the committee as a whole. That the bill wasn't printed up or presented until just before the vote was taken. No reasonable opportunity to examine and dis-

cuss this bill was ever given to the legislators in either house. Subsequent expert testimony provided, that by these tactics, a minority party in the State of New York representing 47% of the voters actually gained 60% of the Congressional seats from the state.

Appellants' contention is that all of the foregoing clearly violates the due process of law provision of the Constitution; impairs the right to vote and nullifies in many instances, the votes of American citizens who are members of a political party other than the Republican.

That this law as passed creates two types of citizens, a first and second class. The first class being the minority Republicans, who obtained 60% of all the Congressional seats. The latter class being the other groups representing 53% of the voters of the State of New York who hold a total of 40% of the Congressional seats. (It is to be noted that the Democratic Party of the State of New York is in fact the majority party of the State having more than 50% of the voters therein.)

Appellants' next witness was Michael J. Dubin, who qualified as an expert on reapportionment, not only on the Congressional districts in the State of New York, but in the country as a whole. He fully and completely corroborated, with exact and detailed figures using the material from the Bureau of Census in Washington, the figures of the Board of Health of the City of New York and the figures of the Planning Commission of the City of New York. He fully confirmed that the five mile line dividing the Sixth and Seventh Congressional Districts was in fact a "color line" and made up 80% of the border between the Sixth and Seventh Congressional Districts. He fully confirmed the testimony of the prior witnesses that 17,000 Negroes had been removed en masse from the

Sixth Congressional District and joined with an existing 80,000 colored group in the Seventh Congressional District, making a total mass of 97,000 colored people ringed by the northern boundary of the Seventh Congressional District. That these 17,000 colored people were taken from the smallest Congressional district in Queens and placed into the largest. (Area "A" on Appellants' map, Exhibit "C".) That area "B" on Appellants' map which was added to the Sixth Congressional District was composed of all white persons who took the place of the 17,000 colored removed from the Sixth Congressional District. He also confirmed that in area "C" of Appellants' map, particularly Section number 3 thereof, colored persons who lived just north of the line had been removed from the Sixth Congressional District under Chapter 980 by digging into said district in the form of statutory surgery to cut them out. That under Chapter 980 of the Laws of 1961, the total Negro population in the Sixth Congressional District was ¾ of 1% whereas the total Negro population of the Seventh Congressional District, directly south of it was more than 21%.

Plaintiffs' next witness was the distinguished expert on reapportionment, the Honorable David Wells, Assistant Director of the Political Department of the International Ladies' Garment Workers Union. He testified to his writings in the field, and of his lectures and hours of study. He testified to the unusual and bizarre character of many of the districts created by Chapter 980 of the Laws of 1961. He described how Staten Island, which had approximately an equal number of Democrats and Republicans, had joined to it a segment of Brooklyn, fronting on Jamaica Bay. That in so doing, the party in power had crossed not only the harbor of New York, but also several Congressional districts between Staten Island itself and this remote addition thereto. He also explained

that in so doing, there was the further obvious strategy on the part of the party in power to create a new district in Bay Ridge which was preponderantly Republican and fronted on New York Harbor. That this technique of crossing other Congressional districts to add pieces to a remote Congressional district, was the first of its kind in the history of the State of New York and had never been done before. It is obvious that this new concept would, if permitted and was constitutional, that a portion of the Bronx could be joined to part of Buffalo to create a Congressional district, if such tactics were permitted, or part of Manhattan could be joined to Rochester to form a Congressional district if such a law were to be declared constitutional.

Various other Congressional districts were produced of the most incredible description, in the form of color charts which will be shown to this Court at time of argument. One of these districts, namely the 14th District in Brooklyn has two almost equal areas solely joined by a highway which runs along the waterfront to make up one district. Another district, the 35th, stretches more than 200 miles in a long unique shape from Rochester almost across the entire state. The experts corroborated the fact that the minority party in power had 60% of the Congressional seats. The testimony of these experts is too much in detail for this Jurisdictional Statement, but must be read in its entirety in the record itself. Chapter 980 of the Laws of 1961 has set an all time record for segregation, abuse of the due process of law, and made reapportionment a legal mockery.

CONCLUSION

For the foregoing reasons, jurisdiction of this appeal should be noted and a hearing on the merits should be granted.

Respectfully submitted,

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APPENDIX "A"

Opinion

Before:

MOORE, C. J., BRUCHHAUSEN, J., and ABRUZZO, J.

MOORE, C. J.

This is another of the numerous cases involving legislative apportionment that have been brought in the courts following the Supreme Court's opinion in *Baker* v. *Carr*, 369 U. S. 186 (1962). Plaintiffs' claims arise out of the enactment of Chapter 980 of the 1961 Laws of New York which established new Congressional Districts in New York State necessitated by the reduced allotment of Congressional seats for New York from 43 to 41 following the 1960 decennial census.

For their first cause of action, plaintiffs allege that in changing the old Fourth Congressional District into the new Sixth Congressional District in Queens, the Legislature consciously and purposefully excluded approximately 75-80% of the Negro population residing in the old Fourth; that the Legislature erected a color line running for about 5 miles along the southern perimeter of the district; and that a straight boundary line running along Union Turnpike was converted into an irregular "W" shaped area with the intention of excluding Negroes residing in the southern portion of the "W" from the new Sixth. Upon the basis of these assertions, they claim that such a redrawing of District lines constitutes a violation of the Fourteenth and Fifteenth Amendments and the so-called Civil Rights Acts (42 U. S. C. A. §§1981, 1983).

Appendix "A"

For their second cause of action, plaintiffs allege that Chapter 980 was designed (1) on a state-wide basis to discriminate against certain citizens who are members of a particular political party to the advantage of another group of citizens who are members of the majority party in the State Legislature at the time Chapter 980 was enacted, and (2) in the Sixth Congressional District for the benefit of the present Congressional representative, Seymour Halpern. They claim that redistricting having the primary effect of advantaging a particular party is a violation of the Fourteenth and Fifteenth Amendments of the Constitution.

Plaintiffs further allege that they are Negro citizens residing in the old Fourth Congressional District entitled to vote therein and that they are bringing this action as a "class suit" on their own behalf and on behalf of all others similarly situated who will be excluded from the new Sixth Congressional District.

The relief requested is that a three-judge constitutional court be convened to hear and decide the case; that the Court adjudge Chapter 980 to be unconstitutional as applied to plaintiffs and the class they represent; that the Court enter preliminary and permanent injunctions against the enforcement of the Act until such time as the New York State Legislature constitutionally redistricts; that Governor Nelson Rockefeller be enjoined from signing any bill segregating Negroes from whites or designed to advantage one political party; that Seymour Halpern and all other Congressional candidates be enjoined from running for Congressional office in the new Sixth Congressional District unless these plaintiffs and their class are permitted to vote in that election;

that the Court retain jurisdiction until proper relief is granted; and that the Court grant any other or further relief as to the Court may seem just and proper.[1]

Plaintiffs, offering no direct proof that the Legislature was motivated by racial considerations in the redistricting of the old Fourth, would have us infer this from the changes that took place. They argue that an L-shaped area in the southeastern portion of the old district, designated as "Area A" on plaintiff's Exhibit 3 attached to their complaint, was removed in forming the new Sixth because 15,000 out of the 17,500 residents in that area were Negroes. They claim that this change resulted in the erection of a 5-mile color line running in part along the northern portion of Area A. The inclusion in the new Sixth of a rectangular area along the southwestern boundary of the old Fourth, designated as "Area B", which is bounded on the south by the Long Island Railroad tracks, is offered as further proof of the racial bias of the Legislature. Area B is almost exclusively white, with a heavy Negro population living south of the boundary line, at least on the eastern side of the Van Wyck Expressway. Plaintiffs also point to a W-shaped deviation from a formerly straight boundary running along Union Turnpike, designated as "Area C". Here 384

[1] The complaint in this action was filed on April 24, 1962. A motion for a preliminary injunction was made the following day and, after a hearing on May 10, 1962, it was denied on May 17, 1962. Instead of proceeding immediately to trial, as suggested by the court, plaintiffs petitioned for a writ of certiorari. This judgment was affirmed *per curiam* by the Supreme Court, 371 U. S. 1 (1962). Trial was set for August 27, 1962, and was adjourned at plaintiff's request to September 10, 1962. The trial was held on September 10 and 11, 1962.

Appendix "A"

Negroes live along the boundary of the excised portion of the old Fourth.

Certain census population figures were offered to demonstrate the overall changes in the old Fourth and the surrounding districts. The following is a tabulation of those figures.[2]

		White		*Negro and other non-white*	
District	*Total Population*	*Population*	*% of District*	*Population*	*% of District*
Old Fourth	467,384	444,969	95.2%	22,415	4.8%
Old Fifth	391,403	309,946	79.0%	82,357	21.0%
Old Sixth	507,685	478,051	94.2%	29,634	4.8%
New Sixth [3]	417,367	410,687	98.4%	6,680	1.6%
New Seventh	459,844	362,662	78.9%	97,182	21.1%
New Eighth	432,776	403,407	93.2%	29,369	6.8%

Another court has recently had occasion to review the legislative history surrounding the enactment of Chapter 980. *Wright* v. *Rockefeller*, U. S. D. C. S. D. N. Y., Civ. 62-2601, November 26, 1962. The legislative reports there

[2] The figures for the old Congressional districts were obtained through the official count of the returns of the Eighteen Census of the United States on file in the Bureau of the Census. Those for the new districts are based on a preliminary tabulation made by the Bureau of the Census. We have used these figures rather than other estimates offered at trial because these are more complete.

[3] At trial it was stated that the total Negro and non-white population in the new Sixth is about 5,300 out of a total population of about 419,000. According to these figures, the Negroes and non-whites would constitute 1.3% of the new Sixth.

cited make it clear that the Legislature made an effort to ensure comparative equality of representation throughout the state by using a statewide average of about 409,000 persons per district and keeping a maximum of a 15% variation from that average. Substantial changes in these Queens districts were necessary to bring the old Sixth (now Eighth) with a population of 507,685 into line with the state average.

In our opinion, plaintiffs have not sustained their burden of proving that Chapter 980 is unconstitutional. It is impossible for us to speculate, and indeed it is not our function to do so, on why a district line turns to the right at one street and left at another. There are a myriad of possible variations in the drawing of such lines. The proof adduced at trial on the first cause of action does not support the claim of racial discrimination. Certain areas of the old Fourth other than those already mentioned, designated at trial as "Areas D, G and H", were also removed from that district, and all of these were predominantly white. The mere fact that a substantial number of Negroes living in Area A on one of the boundaries were moved from one district into another is not sufficient basis for a conclusion on our part that it was intentional and racially motivated. Furthermore, no inference whatsoever can be drawn from the changes that took place in Area C. It would be the height of unwarranted speculation for us to find that the Legislature removed over 15,000 persons for the sole purpose of excluding 384 Negroes from the new Sixth out of a total population of some 467,000.

The long color line extending along the southerly edge of the new district for some five miles, so stressed by

plaintiffs on the trial as proof of intent consists of a solid concrete abutment upon which run the tracks of the Long Island Railroad and of several large thoroughfares. This situation makes for a logical geographic dividing line even as rivers so frequently divide States or Counties. Nor is it surprising in any large Metropolitan area to find along any broad or main artery that it may have become a dividing line between national or racial groups. Yet such a thoroughfare may be a logical line of demarcation.

Not only is there no injury allegedly suffered by virtue of the redistricting, but no conceivable reason for this purported discrimination against these plaintiffs has been suggested. This case is far different from *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1962), urged by plaintiffs as a compelling precedent. As stated in *Wright*, *supra*:

> The *Gomillion* case has no application whatsoever. There some 400 Negro residents of the city of Tuskegee who were entitled to all the privileges of city residents including voting were deliberately disenfranchised from such voting by a wholly irrational drawing of new city boundaries which did not even slightly veil the obvious purpose of excluding Negroes as city voters.

In this instance the Negroes have been deprived of nothing; they have been moved from one district where Negroes represented 6% of the total population to another district having 23% Negroes. In substance, their claim is that the Legislature moved them to another district for no reason other than the fact that they were Negroes. Without intimating any view as to whether, if

proven, this would state a cause of action under the Fourteenth Amendment, the absence of any material change in their rights, including their right to vote, negates the inference of racial discrimination that plaintiffs would have us draw.

Plaintiffs' second cause of action is a claim that Chapter 980 was designed to redistrict the entire state for the benefit of the Republican Party which has a majority in the State Legislature.[4] They offered the testimony of Senator Joseph Zaretski, the Minority Leader of the State Senate, to prove that the bill was passed without a public hearing and an opportunity for public debate. He also testified that although he was given a copy of the proposed legislation, he never had the opportunity to view a prepared map illustrating the district changes. Plaintiffs again point to changes in several specific districts, namely the new 1st in Suffolk County, the new 6th in Queens, the new 14th, 15th and 16th in Brooklyn and Richmond, the new 23rd and 24th in the Bronx, and the new 35th upstate as proof of legislative motive.

Chapter 980 was duly enacted by the requisite majority of the State Legislature.[5] There is no proof that the rules of the Legislature were not properly followed. Although a copy of a proposed bill normally must be submitted to the members three days before a vote, this is not the case in an extraordinary sesison such as the one at which

---

[4] Although not alleged in the complaint, plaintiffs are registered voters in the Democratic Party.

[5] The vote in the State Senate was 33 to 25 in favor of the bill, all Senators voting strictly along party lines. The vote in the State Assembly was 76 to 61 in favor of the bill. Under the State Constitution, no bill can be approved in the lower house with fewer than 76 votes. Five Republicans in the Assembly voted against the bill.

Chapter 980 was enacted. Neither is there any evidence that the majority was not aware of the substance of the bill before them. We think our inquiry as to this aspect of the second cause of action must end here.

Plaintiffs' other evidence on this cause of action suffers from the same deficiencies present in their first cause of action. One expert testified that he expected the redistricting to produce a new Congressional delegation from New York composed of between 24-26 Republicans and 15-17 Democrats as opposed to a 1960 Congressional delegation of 21 Republicans and 22 Democrats. This, in conjunction with the fact that according to 1961 registration statistics 44% of the registered voters in the state are Republicans, 50% are registered Democrats, and the other 6% are primarily Liberals, is purportedly proof of legislative discrimination against members of the Democratic party.

Plaintiffs also rely heavily on the changes in the new 6th as well as in the new 14th, 15th and 16th. The only proof offered with respect to revisions in the 23rd and 24th in the Bronx and the 35th upstate were maps illustrating these changes.

As to the new 6th, no figures were offered to show the breakdown in Republican and Democratic registration in that district prior to the redistricting. There was testimony that the new 6th is composed of approximately 52% registered Democrats and 48% Republicans. In the 1960 election, the incumbent Republican, Seymour Halpern, carried the district by 21,000 votes despite the fact that President Kennedy won by about 9,000 votes in the same district. All that can be said to be proven by these facts

is that the people in the district voted on the basis of the individual candidate rather than on strict party lines.

The old 15th (now the new 16th) was composed of Staten Island and part of the Bay Ridge section of Brooklyn. Since State Island only has a population of some 231,000, some portion of the Long Island mainland had to be added to it in order to create a district comparatively equal in population to other state districts. Plaintiffs argue that the addition of a new section of Brooklyn near Jamaica Bay further removed from Staten Island than the old Bay Ridge section is proof of legislative intent. However, the evidence also showed that Staten Island is evenly divided among Republicans and Democrats and that the heavily Republican Bay Ridge area had enabled Republicans to elect a Congressman from that district for the last six terms. The new section is also evenly divided and apparently the change has converted what was formerly a relatively safe Republican seat into a closely contested one. It was argued that the reason for this change was a desire to move the Bay Ridge area into one of the other Brooklyn districts in order to make the new 15th more solidly Republican than the old 12th and to ensure at least one Republican seat in heavily Democratic Brooklyn.

The mere statement of these contentions makes obvious the tenuous nature of plaintiffs' proof. We are asked to wend our way through the streets of Brooklyn and across the Narrows to Staten Island and to conclude at the end of our journey that there is something unconstitutional lurking along the way. But the only thing we can be certain of is that a reduction in New York's Congressional seats was necessary, that the Legislature

endeavored to create comparative equality of population in the state districts and that this was duly accomplished. Any other conclusion would be mere speculation. The process of prediction in the political area is fraught with difficulties, to which many unsuccessful candidates can most eloquently testify.[6] The incalculable and imponderable factors that make up an individual's choice as to how he will register his vote make certainty here an illusive object. We would require far more substantial evidence to warrant our intrusion into the political arena and to justify any action by the Court requiring the Legislature to revise these districts again.

Complaint dismissed.

LEONARD P. MOORE
U. S. C. J.

(Signature illegible)
U. S. D. J.

WALTER BRUCHHAUSEN
U. S. D. J.

Brooklyn, N. Y.
Dated: January 18, 1963.

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[6] Although not of legal significance, the advantages of hindsight makes it possible to add an interesting historical footnote to this case. In the 1962 Congessional election on November 11th, despite the dire predictions of so-called experts, 20 Democrats and 21 Republicans were elected to Congress from New York. In the newly created 1st District in Suffolk, a Democrat, Otis G. Pike, was elected by over 30,000 votes. Seymour Halpern was re-elected in the 6th District, this time by some 40,000 votes. The Democrats were victorious in a close election in the new 16th (Staten Island and a portion of Long Island), as well as in the new 14th and 15th in Brooklyn. Incumbents Buckley (Democrat) and Fino (Republican) were elected by handsome majorities in the 23rd and 24th in the Bronx. A Democrat, Samuel Stratton, was elected in the new 35th upstate.

APPENDIX "B"

United States Constitution, Federal Statutes and State Statutes Involved

UNITED STATES CONSTITUTION; AMENDMENT XIV, § 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * * "

UNITED STATES CONSTITUTION; AMENDMENT XV, § 1:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude. * * * "

FEDERAL STATUTES:

U. S. C., Title 42, Sections 1983 and 1988:

> "§ 1983 Civil Action for deprivation of rights—
>
> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Appendix "B"

"§ 1988. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and title 18 for the protection of all persons in the United States in their civil rights, and for their vindication shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are different in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty."

U. S. C. Title 28, Section 1343, § (3):

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person. * * * To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any rights, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Appendix "B"

The Federal Declaratory Judgment Act. U. S. C., Title 28, Sections 2201 and 2202:

"§ 2201. Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States and the District Court for the Territory of Alaska, upon the filing of an appropriate pleading, may declar the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

"§ 2202. Further relief.

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

U. S. C. Title 2, Section 2a:

"§ 2a. Reapportionment of Representatives; time and manner; existing decennial census figures as basis; statement by President; duty of clerk

(a) On the first day, or within one week thereafter, of the first regular session of the Eighty-second Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indiana not taxed,

as ascertained under the seventeenth and each subsequent decennial censues of the population, and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions, no State to receive less than one Member.

(b) Each State shall be entitled, in the Eighty-third Congress and in each Congress thereafter until the taking effect of a reapportionment under this section or subsequent statute, to the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member. It shall be the duty of the Clerk of the House of Representatives, within fifteen calendar days after the receipt of such statement, to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the Sergeant at Arms of the House of Representatives; and in case of vacancies in the offices of both the Clerk and the Sergeant at Arms, or the absence or inability of both to act, such duty shall devolve upon the Doorkeeper of the House of Representatives.

(c) Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: (1) If there is no change

in the number of Representatives, they shall be elected from the districts then prescribed by the law of such State, and if any of them are elected from the State at large they shall continue to be so elected; (2) If there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; (3) if there is a decrease in the number of Representatives but the number of districts in such State is equal to such decreased number of Representatives, they shall be elected from the districts then prescribed by the law of such State; (4) if there is a decrease in the number of Representatives but the number of districts in such State is less than such number of Representatives, the number of Representatives by which such number of districts is exceeded shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State; or (5) if there is a decrease in the number of Representatives and the number of districts in such State exceeds such decreased number of Representatives, they shall be elected from the State at large."

STATE STATUTES: CHAPTER 980; 1961 Laws of the State of New York

"§ 110. Present congressional districts

The congressional districts of this state, as existing immediately before the time this article takes

effect, shall continue to be the Congressional districts of the state until the expiration of the terms of the representatives in congress then in office, except for the purpose of an election of representatives in congress for full terms beginning at such expirations."

"§ 111. New congressional districts

Except as provided in section one hundred ten, the congressional districts of this state from and after the time this article takes effect, shall consist as follows:

* * * * *

SIXTH: The Sixth Congressional District shall consist of that part of the County of Queens beginning at a point where Linden Boulevard intersects the county line between Queens County and Nassau County, thence Westerly along Linden Boulevard to Springfield Boulevard, to Murdock Avenue, to Colfax Street, to Hollis Avenue, to Jamaica Avenue, to Merrick Boulevard, to Archer Avenue, to WanWyck Expressway, to Atlantic Avenue, to One Hundred Twenty Seventh Street, to Atlantic Avenue, to Woodhaven Boulevard, to Park Lane South, to Ninety Eighth Street (Diamond Street), to Woodhaven Boulevard, to Myrtle Avenue, to Eightieth Street, to Metropolitan Avenue, to Sixty Ninth Avenue, to Burns Street, to Union Turnpike, to Queens Boulevard, to Main Street, to Eighty Fifth Drive, to One Hundred Forty Fourth Street, to Eighty Fifth Avenue, to One Hundred Forty Eighth Street, to Eighty Fourth Drive, to Smedley Street, to Grand Central Parkway, to One

Appendix "B"

Hundred Sixty Fourth Street, to Union Turnpike, thence Easterly along Union Turnpike to Hollis Court Boulevard, to Richland Avenue, to Peck Avenue, to Bell Boulevard, to Kingsbury Avenue, to Springfield Boulevard, to Sixty Ninth Avenue, to Cloverdale Boulevard, to Horace Harding Expressway, thence Westerly along Horace Harding Expressway to Peck Avenue, to Fresh Meadow Lane, to North Hempstead Turnpike, to Main Street, to Horace Harding Expressway, to Rodman Street, thence Northerly along Rodman Street to North Hempstead Turnpike, and One Hundred Thirty Third Street thence along One Hundred Thirty Third Street to Elder Avenue, to Peck Avenue, to Main Street, to Elder Avenue, to Kissena Boulevard, to Forty Fifth Avenue, to Parsons Boulevard, thence Northerly to Bayside Avenue, thence Easterly along Bayside Avenue to Bayside Lane, to Francis Lewis Boulevard, to Twenty Fourth Road to Utopia Parkway to Twenty Fourth Avenue, to Two Hundred First Street, to Twenty Third Avenue, to Two Hundred Seventh Street, to Twenty Sixth Avenue, to Bell Boulevard, to Twenty Fourth Avenue, thence Easterly along Twenty Fourth Avenue and Twenty Fourth Avenue extended to and through the waters of Little Neck Bay to the county line between Queens County and Nassau County, thence Southerly along said county lines of the County of Queens and the County of Nassau to the place of beginning.

"§112. Definitions

"The words 'county', 'city', 'town', 'village', 'ward', and 'election district' as used in this article refer to counties, towns, villages, wards and

election districts as constituted on November first, nineteen hundred sixty-one.

"§2. This act shall take effect January first, nineteen hundred sixty-two."

NEW YORK STATE LEGISLATIVE DOCUMENT NO. 45 (1961)

"The text of the Interim Report of the Joint Legislative Committee on Reapportionment which was submitted to the Second Extraordinary Session of the Legislature on November 9, 1961, follows:

To the Legislature of the State of New York:

"The Joint Legislative Committee on Reapportionment created by concurrent resolution adopted March 29, 1949, and last continued until March 31, 1962, by concurrent resolution adopted March 24, 1961, submits the following as its interim report, relating to the creation of new Congressional districts."

NECESSITY FOR THE CREATION OF NEW CONGRESSIONAL DISTRICTS

"Under Federal Law, after each Federal decennial census an apportionment of the four hundred and thirty-five Members of the House of Representatives is made among the several states by the method known as the method of equal proportions. Such apportionment involves only a mathematical operation.

"After the 1960 decennial census, the apportionment of Members of the House of Representatives by the above described method resulted in a reduc-

tion from 43 to 41 of the number Representatives apportioned to New York. Federal Law further provides that, where the number of Representatives apportioned to a state is reduced and the number, as so reduced, is less than the number of districts in the state, all of the Representatives apportioned to the state shall be elected at large, unless new districts not exceeding in number the number of Representatives apportioned to the state shall be created. Since New York now has 43 districts and only 41 Representatives have been apportioned to it under the present apportionment, it will be necessary to elect all 41 Representatives at large at the 1962 election, unless 41 new districts are created prior to that time. To include on the ballot for that year candidates for 41 seats in the House of Representatives in addition to candidates for state, local and judicial offices would, in the opinion of your committee, make a mockery of the election."

FEDERAL LAW REGULATING CONGRESSIONAL DISTRICTING WITHIN THE STATES

"The Federal Constitution provides for the apportionment of Representatives among the several states. It further provides that the times, places and manner of holding elections for Representatives shall be prescribed in each state by the Legislature thereof, but that Congress may at any time by law make or alter such regulations.

"In the early days of the Republic, some of the states elected by districts and some at large. The desire for local representation, however, gradually

led to the adoption of the district method by the majority of the states. By 1842, of the states entitled to more than one Representative, 22 were electing their Representatives by districts, and only 6 were electing at large.

"As the practice of electing by districts became firmly established, Congress, in connection with the succeeding apportionments of Representatives among the states, enacted statutes setting standards for the election of Representatives within the several states. In connection with each decennial census from 1840 to 1910, with the exception of the census of 1850, Congress enacted a law of this character. The last of these laws was the Act of August 8, 1911[1] (37 Stat. L. 13), which provided that districts should consist of contiguous and compact territory and contain as nearly as practicable an equal number of inhabitants. There was no apportionment Act after the census of 1920. The permanent act of June 18, 1929 (46 Stat. L. 13), as originally enacted and as amended by the Act of April 25, 1940[2] (54 Stat. L. 162), contained no standards for the creation of districts. In Wood against Broom, 53 S. Ct. 1, 287 U. S. 1, 77 L. Ed. 131, a case involving the creation of Congressional districts after the apportionment under the Act of 1929, the Supreme Court held that the provisions of the Act of 1911 requiring that districts be of contiguous and compact territory and, as nearly as practicable of equal popu-

[1] 2 U. S. C. A. §2.

[2] 2 U. S. C. A. §2a.

lation, applied only to districts to be formed under the Act of 1911. In Colegrove against Green, 66 S. Ct. 1198, 328 U. S. 549, 90 L. Ed. 1432, Plaintiffs urged that an act creating Congressional districts substantially unequal in population be held invalid as violating the Fourteenth Amendment of the Federal Constitution. In that case the Supreme Court in its opinion, after citing with approval Wood against Broom, supra, stated that it was not within the competence of the court to grant the relief asked by the Plaintiffs.

"Since the above cases, various bills have been introduced in Congress to provide standards to be followed by the state legislatures in creating Congressional districts. None of those bills has been enacted into law. At the present time, therefore, there are no Federal standards binding upon the states in creating Congressional districts, and there are no such standards to be found in the Constitution of statutes of New York."

STANDARDS ADOPTED BY THE COMMITTEE

"In the absence of Federal and State constitutional and statutory standards governing the creation of Congressional districts, your Committee has been obliged to determine for itself what, if any, such standards should be adopted by it in the preparation of a bill to be recommended to your Honorable Bodies. It is the conclusion of your Committee that the most important standard is substantial equality of population.

"While exact equality of population is the ideal, it is an ideal that, for practical reasons, can never

be attained. Some variation from it will always be necessary. The question arises as to what is a permissible fair variation.

"Your Committee has examined reports of Committee hearings on bills introduced in Congress bearing upon this subject, and reports and publications of authorities on this subject. Variations of from ten to twenty per cent from average population per district have been suggested from time to time. After considerable study, your Committee decided that a maximum variation of fifteen per cent from average population per district, the variation recommended by the American Academy of Political Science and endorsed by former President Truman, would preserve substantial equality of population and permit consideration to be given to other important factors such as community of interest and the preservation of traditional associations.

"In addition to keeping the districts in its proposed bill within the maximum of the fifteen per cent variation from average population per district, your Committee has also created proposed districts of contiguous territory and has endeavored to preserve the several metropolitan areas of the state, either in single districts or, where large populations made that impossible, in contiguous and closely allied districts."

NEW YORK STATE AND THE REMAINDER OF THE STATE

"In an attempt to assist the members of the Legislature in their analysis of the consideration given Metropolitan New York by your Committee we

would like to point out that the population of New York City according to the 1960 Federal decennial census is 7,781,984. 19 districts have been created in the City with an average population of 409,578 per district. The remainder of the state has a population of 9,000,400 and has 22 districts with an average population of 409,109 per district. The total population of the state is 16,782,384. Dividing this population by 41 the total number of Representatives gives an average population per district throughout the State of 409,326. A mere inspection of these figures will demonstrate that there has been no discrimination against New York City in the proposed bill."

CONCLUSION

"The proposed bill of the Committee and the exhibits annexed thereto are included in the Appendix following this report."

ACKNOWLEDGMENTS

"Your Committee wishes to express its thanks to Mr. C. Burr Reed, Consultant to the Committee and to its Counsel, Associate Counsel and Staff for their assistance to the Committee in carrying out its task.

Dated: November 9, 1961.

Respectfully submitted,

ROBERT C. MCEWEN, *Chairman*
ROBERT M. QUIGLEY
ALONZO L. WATERS
JOHN H. HUGHES
WILLIAM SADLER"

APPENDIX "C"

[*For the Convenience of Court and C*
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Counsel This Map
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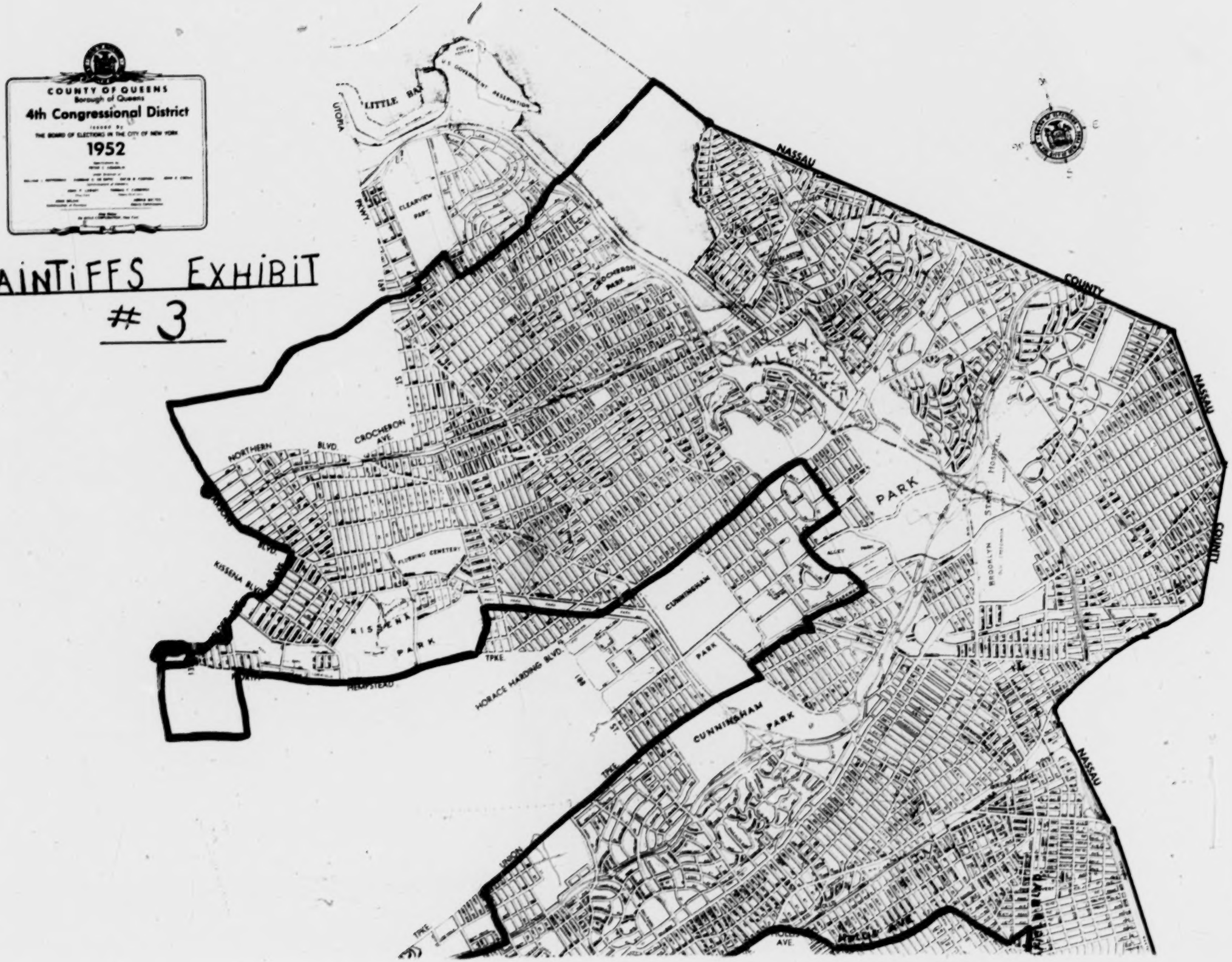
COUNTY OF QUEENS
Borough of Queens
4th Congressional District
THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK
1952
PLAINTIFFS EXHIBIT
#3
LITTLE BAY
UTOPIA
PKWY.
CLEARVIEW PARK
CROCHERON PARK
NASSAU COUNTY
ALLEY
NORTHERN BLVD
CROCHERON AVE
PARK
KISSENA BLVD
FLUSHING CEMETERY
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CUNNINGHAM PARK
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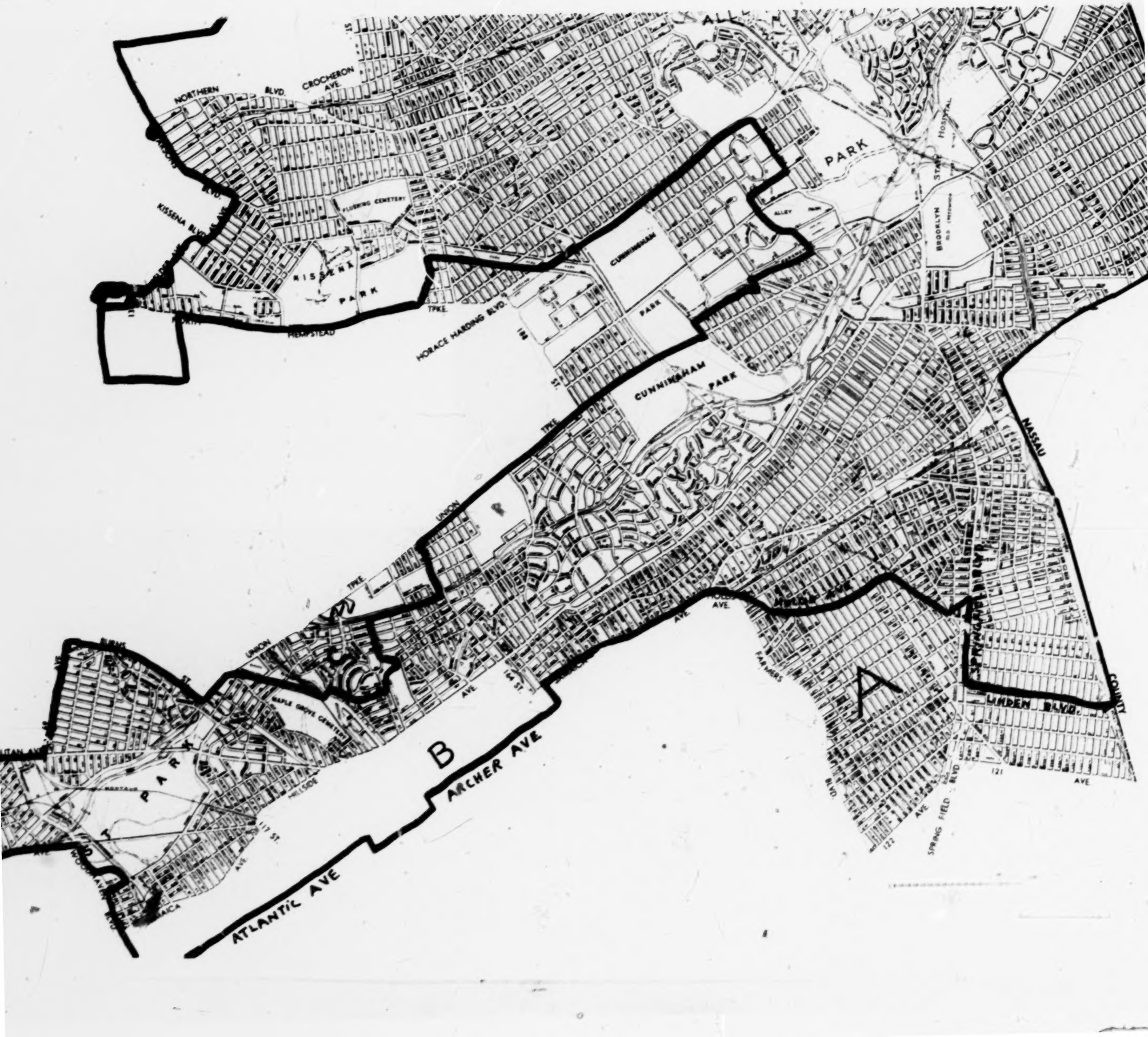
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STATE HOSPITAL
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PARK
NASSAU
COUNTY
UNION TPKE
UNION AVE
MAPLE GROVE CEMETERY
PARK
ATLANTIC AVE
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ARCHER AVE
A
LINDEN BLVD
SPRING FIELD BLVD
121 AVE
122 AVE
117 ST
164 ST
FARMERS

MICRO CARD
TRADE MARK ®
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Supreme Court of the United States

OCTOBER TERM, 1963

No. 267

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

against

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Appellees Governor, Secretary of State and Attorney General, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument, or, in the alternative, that this appeal be dismissed.

Statute Involved

Extracts from the challenged statute, Chapter 980 of the New York Laws of 1961, are set forth in Appendix B of appellants' jurisdictional statement. The statute in question, enacted on November 19, 1961, redistricted New York for the purpose of the 1962 Congressional elections. It was made necessary by the State's loss of two seats in the House of Representatives as a result of the 1960 decennial census. See 2 U.S.C. § 2(a).

Question Presented

Did the District Court err in finding that appellants failed to prove their allegations of racial and partisan gerrymandering?

Statement of the Case

Appellants brought this action seeking a declaration that Chapter 980 of the New York State Laws of 1961 violates the Fourteenth and Fifteenth Amendments of the Constitution of the United States and an order enjoining defendants from enforcing or executing that statute. Appellants allege that they are residents of the former Fourth Congressional District, and that the "Fourth Congressional District is practically identical with the new Sixth Congressional District except that certain neighborhoods [in which appellants reside] which are part of the Fourth Congressional District, have been excluded from the new Sixth Congressional District, while other neighborhoods, not a part of the Fourth Congressional District, are included in the new Sixth Congressional District." (Complaint, par. 9.) They go on to allege that the redistricting "was solely for the benefit of the present congressional representative, the political party he represents, and not for the well-being of the citizens of the [former] Fourth Congressional

District * * *". Furthermore, they allege that they are the victims of a "purposeful and systematic drawing of boundary lines to 'fence the Negro citizens out' of the new Sixth Congressional District."

Before going to trial, appellants moved for a preliminary injunction restraining enforcement of Chapter 980 pending final disposition of the action. After a hearing, a statutory three-judge Court denied appellants' application for a preliminary injunction. On October 8, 1962, this Court affirmed the order denying a preliminary injunction. 371 U. S. 1 (1962).

A hearing on the merits was held before the three-judge District Court on September 10-11, 1962.

Appellants presented seven witnesses. Two of them, William Nance and John Perry, testified merely that they resided in the affected area and objected to the redistricting. Two others, Walter Sommer and Esiah Friedman, testified that the southern boundary of the new Sixth District coincided with the northern boundary of the Negro neighborhood. The fifth witness, Michael Dubin, testified that one of the neighborhoods that used to be part of the old Fourth District, but is not part of the new Sixth, is predominantly Negro. The sixth witness, State Senator Joseph Zaretzki, testified that the Act was passed according to law at an extraordinary session convened by the Governor and that he had not seen the proposed Act before it was introduced in the Legislature. The last witness, David Wells, discussed the geographic contours of some of the new districts created in New York City, and concluded that the new Act was more favorable to the Republican than to the Democratic party.

Appellees presented no witnesses. Instead, they presented two exhibits for the aid of the Court. The first (marked Defendants' Exhibit A in evidence) consisted of four statistical tables compiled by the Bureau of the Census and certified by its Director. These tables showed

the 1960 population by race of the old Fourth, Fifth and Sixth Congressional Districts and the areas which comprise the new Sixth, Seventh and Eighth Districts. In addition, the tables showed the 1960 population by race of each area in the new districts that was formerly included in the old Fourth, and of each area taken from the old districts to make up the new Sixth. The second exhibit (marked B for identification) was a photocopy of the map of the old Fourth and new Sixth Districts which had been annexed to the complaint and received in evidence. On it, appellees indicated (1) each area which was part of the old Fourth but was not included in the new Sixth, or which was part of new Sixth but had not been part of the old Fourth, and (2) the old and new Congressional District embracing each of these areas. Thus, appellees' two exhibits, when read together, present a complete graphic and statistical picture of the effect of Chapter 980 on the portion of Queens involved in this action.

All parties moved for judgment at the close of the hearing (356)*.

Decision Below

The three-judge District Court held that appellants failed to sustain the burden of proving either racial or partisan gerrymandering.

Writing for a unanimous Court, Judge Moore pointed out that the New York State Legislature had to redistrict the area involved in this action in order to keep abreast of population changes which had occurred between the 1950 and 1960 censuses. He noted that several neighborhoods inhabited by white persons, as well as a Negro neighborhood, were taken from the old Fourth District and placed in other districts. And he held that "it would be

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* All numbers in parentheses refer to pages in the transcript of the hearing on the merits, unless otherwise indicated.

the height of unwarranted speculation" to conclude, as did appellants, that one of the "excluded" neighborhoods—containing about 15,000 white persons—was left out of the new Sixth District in order to "exclude" 384 Negroes who also reside in the same neighborhood. Moreover, he stressed that the portion of the southern boundary of the Sixth District which appellants had characterized as a "color line" was, in fact, a logical dividing line between districts, since it consisted of a concrete railroad abutment and several large thoroughfares. He concluded, therefore, that appellants failed to prove their first cause of action.

He then turned to the second cause of action, which charged that the entire redistricting statute was unconstitutional because it was passed for partisan purposes. Again, he held that appellants failed to prove their claims. He pointed out, first, that the testimony of the State Senate Minority Leader that the bill was passed without a public hearing was of no moment since the rules of the Legislature imposed no such requirement. Then, he turned to an analysis of the testimony of appellants' "expert", who predicted that the redistricting Act would result in heavy gains in the 1962 Congressional elections for the Republican party, which is the majority party in the State Legislature. This testimony focused on the new 14th, 15th and 16th Districts, as well as on the Sixth District. He pointed out that the incumbent Republican in the Sixth District, Congressman Halpern, had carried the District by 21,000 votes in 1960, despite the fact that President Kennedy received a majority of that District's votes in the same year; moreover, there are more Democrats than Republicans registered in that District. Thus, he found that appellants, far from proving a gerrymander, had proven that "people in the District voted on the basis of the individual candidate rather than on strict party lines." The other three Districts, located in Brooklyn and Staten Island, like the Sixth District, were created on the basis of

approximate equality in population. Paradoxically, despite the predictions of appellants' "expert", the Democratic candidates carried all three Districts.

Argument

The decision below rests on a purely factual determination—and a clearly correct one, at that. The evidence showed that appellants' reckless charges were wholly unfounded. Far from being the product of a racial gerrymander, the Sixth Congressional District was created on the basis of logical boundary lines, achieved approximate equality of population, and shows no hint of any discriminatory design. And the challenged statute, far from being a sinister device for furthering the majority party's interest, proved to be a fair means of dividing New York into districts of approximately equal population, in which the minority party—as is eloquently shown by the election returns—is quite able to hold its own. There is no basis whatever for review in this Court.

(A)

Appellants' burden is to show that the redistricting statute "does not rest upon any reasonable basis, but is essentially arbitrary." *Morey* v. *Doud*, 354 U. S. 457, 464 (1957). See *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584 (1935). There are, obviously, a great many factors which a legislature takes and ought to take into account in drawing district lines. The economics of a neighborhood, its traditions, transportation, natural boundaries, the interplay of business and residential districts, the preservation of well-established district lines, and many other factors must be taken into account in any successful single-member district system. The overwhelming truth here is that appellants have not only failed to rebut

these rational criteria—but their own witnesses have suggested rational criteria that support the present district lines on considerations completely divorced from gerrymandering or segregation.

First, it was necessary, in order to achieve reasonable parity in population between adjoining districts, to redraw the lines so as to remove territory from the old Fourth and add it to the old Fifth District. Mr. Dubin, appellants' "expert" witness, agreed to this elementary proposition (283-86) and he is borne out by the figures shown in defendants-appellees' Exhibit A (See Appendix, *infra*). By 1960, the old Fourth contained 467,384 people while the old Fifth contained only 391,403 people. The New York State Legislature, despite the absence of a Congressional standard mandating numerical equality (*Wood* v. *Broom*, 287 U. S. 1 [1932]), has adhered voluntarily to a maximum variation of 15% from average population per district, the variation recommended by the American Political Science Association and endorsed by former Present Truman. New York Legislative Document No. 45 (1961); Hearings, Standards for Congressional Districts, H. R. Comm. on the Judiciary, Sub-Comm. No. 2, 86th Cong. 1st Sess., pp. 26, 29 (Serial No. 10, June 24 and Aug. 19, 1959). The population figures for the new Sixth and Seventh Districts—417,367 and 459,844, respectively—considerably close the gap that existed between the old Fourth and Fifth Districts; at the same time, the new figures are comfortably within the self-imposed maximum 15% variation from the average population per New York State Congressional District of 409,326. Thus, the redistricting Act was fully in line with the most obvious purpose of redistricting—achieving a rough population parity.

Second, appellants themselves have established that the district lines follow natural boundary lines. Lieutenant Friedman testified (108-15) and appellants' counsel pointed out in his opening statement (8) that a thirty-foot high

railroad wall runs along the entire length of Archer Avenue, more than two miles out of the five-mile stretch of the southern boundary of the new Sixth District which appellants contend is a "color line". The walled area is sixty feet thick and the only way to get through it is by using specially provided tunnels. What more natural place is there to separate Congressional Districts?

We have thus far argued that appellants' failure to rebut the rationality of the 1961 lines—and, most certainly, their convincing demonstration of that rationality—dooms their case. Yet, for our purposes, this argument is sufficient but hardly necessary. For it developed at the trial that even appellants' allegations of a boundary line dividing whites from Negroes and of a sinister partisan gerrymander are nothing but pure sham.

(B)

In an obvious attempt to capitalize upon this Court's decision in *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960), appellants' verified complaint made a good many reckless charges. It is useful to examine the allegations in light of later events at the trial.

• Appellants alleged that the "color line" runs (Complaint, p. 8) along Hollis Avenue easterly to an apex, "thence straight with a northeasterly curve to meet Springfield Boulevard, thence southerly along part of Springfield Boulevard to where it meets Linden Boulevard. *This line then turns east towards Nassau County.*" (Emphasis supplied). At the trial, it developed that the area south of Linden Boulevard to the county line is white and appellants modified their claims accordingly (85).

• Appellants alleged that the "color line" also runs (Complaint, p. 8-a) on the southern perimeter of Area "B" as far west as Woodhaven Boulevard. When this, too, proved false (47-49), appellants asked that their com-

plaint be modified to show that the "color line" was claimed to exist only along a portion of the southern boundary of the Sixth District.

Appellants alleged ~~that~~ (Complaint, p. 8-a) "Negroes reside in the newly excluded area ['C']." At the trial, appellants conceded (143) that there were more white than colored in "C". It later developed that this was a masterpiece of understatement; of 15,000 persons in "C", only 384 are Negroes (213).

After the complaint had been transformed by the glare of reality, appellants' case rested on one remaining piece of the map—the five-mile stretch, which they still contended was a "color line," from Archer Avenue and Van Wyck Expressway east to Springfield and Linden Boulevards. Assuming *arguendo* that this line actually sharply separated Negroes from whites, had appellants made out a *prima facie* case? We think not.

Of the five-mile "color line," more than two miles were made up of the Archer Avenue wall and another considerable span consisted of a portion of Jamaica Avenue which had constituted the boundary line of the old Fourth District before the new lines were drawn. This left only the northern boundary of Area "A"—a mile, perhaps two miles in length—to serve as the springboard for tainting an Act of the New York Legislature and for demonstrating a deliberate desire to exclude Negroes from the Sixth District.

There were at least five clearly discernible, contiguous areas other than "A" which were part of the old Fourth but were "excluded"—to use appellants' term—from the new Sixth (Defendants-appellees' Exhibit B), and each of them is a predominately white area (276-82). The entire "excluded" area, including Area "A", numbered 85,800 whites and only 15,116 Negroes (Defendants-appellees' Exhibit A). And the entire five-mile "color line" is but

a small portion of the total perimeter of the Sixth District. Although Mr. Dubin did not know the total mileage of the perimeter (266-67), it is obvious from visual inspection of the map annexed to the complaint that the entire "color line" is at most fifteen per cent of the total perimeter of the District.

Almost all of the "excluded" Negroes came from "A" and were added to the new Seventh (old Fifth) Congressional District. Since that district was underpopulated at the time of the 1960 census, it was necessary to add population to it. A large bloc of whites as well as Negroes was added; contrary to appellants' implication that the new Seventh is a predominately Negro district, it retains the same percentage of Negroes as did the old Fifth (203) —21% (Defendants-appellees' Exhibit A).

These facts—even assuming that appellants could show a "color line" exists—contrast sharply with *Gomillion* v. *Lightfoot, supra.*

Gomillion involved an attempt to alter the boundaries of a city in such a way as to remove all save four or five of its 400 Negro voters while not removing a single white voter or resident, thus depriving these voters of the benefits of residence in that city including the right to vote in municipal elections. This, the Court, noted, "was not an ordinary geographic redistricting measure even within familiar abuses of gerrymandering" (364 U. S. at 341)—language borrowed by the appellants in the instant case—and the Court went on to state that the allegations (taken as true, since *Gomillion* came up on a motion to dismiss) were "tantamount for all practical purposes to a mathematical demonstration that the legislation is solely concerned with segregating white and colored voters . . ." And, against this claim, the City authorities were unable to suggest any legitimate function for the redrawing of the municipal boundaries.

In this case we have the very opposite of the *Gomillion* situation. The justification for the redistricting is clear; New York lost two Congressional seats as a result of the 1960 census, and the Districts immediately involved in this action showed wide disparities in population. The mathematics of the redistricting is not at all startling: 23% of the Negro residents (Defendants-appellees' Exhibit A) of the old Fourth District became residents of the new Sixth District (*Compare* Complaint, par. 10, p. 7). Many more whites were "excluded" from the new Sixth District than were Negroes. The differences from *Gomillion* are legion.

The most important difference of all has yet to be explained by appellants. Why would anyone prefer to exclude Negro voters from the Sixth District—where they were always in a very small minority—and include them in the adjoining Seventh District—where they constitute 21% of the total population? If a Legislature wanted to "segregate" a Negro vote, it might be expected to do the very opposite of what has been done here; for example, it might divide the Negro voters between the Sixth and Seventh Districts. This is a far cry from the *Gomillion* situation, where the City authorities, by excluding Negro voters from the boundaries of Tuskegee, were able to disenfranchise them in municipal elections and deprive them of municipal services. In fact, it is impossible to make out any claim of disenfranchisement at all on the facts of the instant case.

So far, we have assumed that appellants actually proved that the "color line" divides whites from Negroes. But the very opposite is true. There are Negroes directly north of Area "A", in the vicinity of Francis Lewis Boulevard and 104th Street (70-71, 87, 256); in fact, Mr. Dubin testified that (257) "there are Negroes throughout the district." To be sure, there may be fewer Negroes north of Area "A" than in it. But a gradual change in

population hardly creates a "color line." And, whatever the terminology, it hardly suffices to meet the burden undertaken by this appellant who would brand a perfectly proper redistricting Act as an exercise in bigotry.

Appellants have utterly failed to prove that the district lines are the results of "segregation." There is absent any evidence at all to support their reckless charges.

(C)

Appellants' charges of partisan gerrymandering proved as ill-founded as were their charges of racial discrimination.

Mr. Dubin testified that 52 per cent of the registered voters in the new Sixth District are Democrats and only 48 per cent are Republicans (236). The District was carried by President Kennedy during the 1960 election by 9,000 votes (241). Congressman Halpern, a Republican, carried the District by 21,000 votes at the same election (241). It is difficult to see how a partisan gerrymander can be shown in a predominately Democratic district created by a Republican legislature. On the contrary, it appears that the incumbent benefits from his personal popularity rather than his party label.

Nor did appellants fare better in their foray into other Districts for evidence of gerrymandering. Mr. Wells' complaint seemed to be (323) that the Brooklyn-Staten Island district was not "contiguous"; but he later admitted that "it all depends on which way you go around" (348) whether or not you find that it is contiguous. His other testimony was based on a "general knowledge of the voting pattern" (330) and amounted to nothing more than a recital that the residents of certain districts tend to favor certain political parties. Mr. Dubin testified that the Republican party was expected to gain 3 to 5 seats at the next Congressional election (235) on the basis of pre-

vious voting patterns (232), but he indicated nothing improper about the Act.

Appellants totally failed to prove their charges of gerrymandering. No one even ventured a guess as to what a "properly" drawn district should look like; it is a safe guess that no one knew the answer. No one testified as to what an "ideal" political balance would be between the two major political parties; again, it is a safe guess that no one knew. And Mr. Dubin, who made an attempt to characterize one of the parties as a minority party on the basis of registration figures, was at a loss to explain how that party elected the present Governor of New York (230-32).

The short of it is that even if it is possible to prove what is an "ideal" political balance and what are the probable results of a forthcoming election, appellants have not done so. They have no more proved a gerrymander than they have proved a "color line"; in fact, at least as to the Sixth Congressional District, they have shown that the new Act creates a district in which the Legislature's majority party has a minority of registered voters.

CONCLUSION

This appeal presents no substantial question. The United States District Court correctly determined that appellants failed to prove the allegations of their complaint. Therefore, the judgment should be affirmed or the appeal dismissed.

Dated: New York, N. Y.
July 26, 1963.

Respectfully submitted,

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Assistant Attorney General,
of Counsel

APPENDIX

Defendants-appellees' Exhibit A

U. S. DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

Washington

May 25, 1962

I hereby certify, That according to the official count of the returns of the EIGHTEENTH CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population of the current (i.e., 87th Congress) Fourth, Fifth, and Sixth Congressional Districts of New York is distributed by race as shown in the following table:

Congressional District	*Total*	*White*	*Negro*	*Other*
Current Fourth, New York	467,384	444,969	19,720	2,695
Current Fifth, New York	391,403	309,046	81,177	1,180
Current Sixth, New York	507,685	478,051	26,298	3,336

I hereby certify, That according to a preliminary tabulation of the returns of the EIGHTEENTH DECENNIAL CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population of the new Sixth, Seventh, and Eighth Congressional Districts of New York is distributed by race as shown in the table below:

Congressional District	*Total*	*White*	*Negro*	*Other*
New Sixth, New York	417,367	410,687	4,812	1,868
New Seventh, New York	459,844	362,662	95,809	1,373
New Eighth, New York	432,776	403,407	26,130	3,239

I hereby certify, That according to a preliminary tabulation of the EIGHTEENTH DECENNIAL CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population

of the new Sixth Congressional District of New York is distributed by race as shown in the table below. The table also shows similar data for the portions of the three current (i.e., 87th Congress) districts from which the new Sixth has been constituted.

Congressional District	*Total*	*White*	*Negro*	*Other Races*
New Sixth, New York	417,367	410,687	4,812	1,868
Current Fourth, New York	365,427	359,169	4,604	1,654
Current Fifth, New York	32,655	32,370	175	110
Current Sixth, New York	19,285	19,148	33	104

I hereby certify, That according to the official count of the EIGHTEENTH DECENNIAL CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population of the current (i.e., 87th Congress) Fourth Congressional District of New York is distributed by race as shown in the table below. On the basis of a preliminary tabulation, the table also shows similar data for the three portions into which the Fourth has been subdivided under the new apportionment, namely, the portions in the new Sixth, Seventh, and Eighth Congressional Districts.

Congressional District	*Total*	*White*	*Negro*	*Other Races*
Current Fourth, New York ...	467,384	444,969	19,720	2,695
New Sixth, New York	365,427	359,169	4,604	1,654
New Seventh, New York	43,364	28,137	14,860	367
New Eighth, New York	58,593	57,663	256	674

/s/ RICHARD M. SCAMMON, Director,
Bureau of the Census.

IN THE

Supreme Court of the United States

October Term, 1963

SEP 3 1963
CLERK

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

AGAINST

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

PLAINTIFF-APPELLANT'S REPLY TO MOTION TO DISMISS OR AFFIRM

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Defendants-Appellees.

PLAINTIFF-APPELLANT'S REPLY TO MOTION TO DISMISS OR AFFIRM

FIRST: The attention of the Learned Court is respectfully called to the fact that on two separate occasions during the course of the trial of the above entitled action, motions to dismiss the complaint, which included both the first and second causes of action, were made *and denied*. On page 14 of the record the presiding justice in

denying the application to dismiss, stated, "You may be sure that the Court will act on your motion at this time, and unfavorably at this time". This motion was repeated at the end of the trial and *again denied*.

In addition, the Learned Court's decision denying the requested injunction and dismissing the complaint was allegedly based on the *facts presented* and not the law.

Therefore, on the basis of this trial and the decision rendered in connection therewith plaintiffs' second cause of action, as a *matter of law* stands as a proper legal cause of action and this cause of action, as it is constituted, is now the *law of the land. Unless it is reversed as a matter of law by this Supreme Court*, plaintiff's second cause of action can be used in every State of the Union as the basis for a lawsuit. There is no other decision which contradicts, *as a matter of law*, the validity of this cause of action.

SECOND: The record is clear, it speaks for itself and no words which respective counsel may use in their briefs can change the record. Nor can the decision of the Learned Court which heard the trial justify an uncontradicted five-mile color line, with whites on one side of the street and colored on the other side of the street, because it's "a logical dividing line". This Court has held that the division of races, regardless as to *whatever* the cause, is unconstitutional.

An examination of the complaint as well as Plaintiffs' Exhibit I at the time of trial, namely the map of the areas involved, will indicate that four out of the five miles of this uncontradicted color line *was created by Chapter 980 of the Laws of 1961*, by eliminating Area A from the new 6th Congressional District and by adding on Area B to the said new Congressional District to take

the place of Area A. Archer Avenue has now been created for the first time as a color line; as is Hollis Avenue, Colfax Street, and Springfield Boulevard. To admit that four out of five miles of the "color line" involved were created by Chapter 980, as does the defendants-appellees on page 9 of their brief, is to lend absolute confirmation that the *Gomillion* v. *Lightfoot* case strongly applies. In fact the Negroes involved in the case at bar, and who have been cut out of the present 6th Congressional District, number approximately ten times the number of Negroes in the *Gomillion* v. *Lightfoot* case.

What kind of legal argument does the Learned Court in its opinion, submit; and do the defendants-appellees present, when they say that prior to the enactment of Archer Avenue as the boundary line, there was a wall two miles long dividing white and colored and that all that Chapter 980 did was to include this wall as part of its southern boundary? All that they are in fact stating is that they have legally created a ghetto of 97,000 colored people and justify this ghetto because there is a wall which makes up two of the five miles involved. This argument is a argument not for the validity, but rather for the illegality of Chapter 980.

THIRD: An examination of the Defendants-Appellees' Exhibit A in the Appendix of their brief fully confirms appellants' contention.

The Learned Court's attention is respectfully directed to the table on the bottom of page 15 of defendants-appellees' brief. In their own brief appellees set forth the figures which show that the present new 7th Congressional District is now the largest Congressional District in Queens. That this district which has a population of 459,844 now has a Negro population of 95,809 and further

that the new 6th Congressional District having only a population of 417,367 and is the smallest district in Queens, now has a Negro population of only 4,812. Previously, which is confirmed by the table directly above on the same page, the old 4th and now the new 6th had a Negro population of 19,720. What has actually happened to approximately 15,000 Negroes in the old 4th which became the new 6th? The answer is, as the experts testified at trial, and which the figures clearly show, that these said 15,000 Negroes were taken from the smallest district in Queens, namely the new 6th and thrown into the largest district in Queens, namely the new 7th, creating a mass ghetto of 95,809 Negroes. If this is not discrimination, segregation, anti-Americanism and a violation of the Constitution of the United States, then nothing is.

By whatveer rationalization the lower Court may use, by whatever excuses, manipulation and justifications the appellees may present, the facts are clear. Human beings were thrown out of one Congressional District into another, solely because they were Negroes.

FOURTH: An examination of the record will show that not only is the second cause of action sound, as a matter of law, and confirmed as such by the lower Court, but the facts presented, fully confirm the validity of the allegations and Chapter 980 should be declared unconstitutional on the second cause of action as well as on the first.

To violate the constitutional rights of citizens, by depriving them of their right to vote; in creating a factual nullity where their vote doesn't count, by taking one area, namely Staten Island and consolidating the same by jumping over a body of water and intervening Con-

gressional Districts, such as a part of Brooklyn facing Jamaica Boy, solely to suit the ends of the party in power (under the new 16th Congressional District) and which has been attempted for the first time; or to take two remote areas and join them by a highway along the edge of the water (the new 14th Congressional District); or to create a Congressional District approximately 200 miles long and only a few miles wide in areas as (the 35th Congressional District); or to have a monstrosity between two Congressional Districts, namely the 23rd and the 24th in the Bronx where you have contortions, appendixes, additions and subtractions, which give these two districts more than a hundred sides and angles which is the worst in the country, and which situation was clearly presented by appellants in the form of charts at the time of trial, is a most violent abuse of the voting rights of the citizens of the State of New York. In countries like Cuba, Portugal, and Russia the inability of citizens to vote for candidates of their choice is known and openly admitted. The problem before this Court is that the same thing exists in the State of New York under Chapter 980, except that instead of being in the open, the issue is hidden; instead of being admitted, it is being denied; but the identical situation exists here as we have in the nations we commonly refer to as dictatorships.

It is a basic proposition that every American citizen should have the equal right to vote. This constitutional right has no meaning unless his right to vote is without impediment, without subterfuge, without prejudice and without being maneuvered into a position where whether he votes or not, the same result will occur.

It is to be noted that the Learned Court below in presenting its opinion, specifically in their Appendix thereto (p. 10 A of the Jurisdictional Statement) advised that

the Staten Island district joined with a piece of Long Island, namely Brooklyn, became in fact Democratic, and attempts to indicate that although you may take pieces from different areas of the State of New York and join them together, one cannot presume that this is for political advantage. The fact of the matter is that what the party in power did in the Staten Island situation by joining part of Long Island with Staten Island, became so notorious a situation and so violently objected to by every decent citizen, that they turned out en masse in the Brooklyn area to protest, and voted against the party which created this illegal and unconstitutional situation.

In summation, if the right of the American citizens to vote freely, without manipulation by the party in power and thus creating two types of citizens (namely the one whose vote counts and the one whose vote does not count), is not protected by this Court, then this nation stands in its greatest peril since the days of its inception; and given the time and the opportunity, a minority will ultimately and successfully take over this country in the form of a dictatorship.

FIFTH: Both causes of action in the complaint should be sustained and the decision of the lower Court reversed.

Respectfully submitted,

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